APPENDIX.

Analysis of the Allegations of the Complaint and of the Complaints in Intervention and Comparison of Those Allegations With the Provisions of the Labor Act.*

Allegations of the Complaint and Complaints in Intervention.	Section of National Labor Relations Act, Which Alleged Conduct Would Violate.
COMPLAINT:	
1. Employer defendants, for the purpose of destroying the CSU and its member unions, conspired to cease employing members of said unions unless they gave up their membership in said unions or obtained a work permit card from a local of the IATSE, and to employ thereafter only members of permittees of locals of the IATSE. Pursuant to said conspiracy, said defendants discharged	1. This is a charge that defendants violated Section 8(1) and (3) of the National Labor Relations Act. Section 8(3) prohibits discrimination in employment on account of union membership. Section 8(1) prohibits interference with employees in the exercise of their right of self-organization.

*The purported acts which caused damage to petitioners occurred in 1946, prior to the enactment of the Labor-Management Relations Act of 1947, and are, therefore, discussed in relation to the National Labor Relations Act which became effective on July 5, 1935. However, such acts would, if committed subsequent to August 22, 1947, have been unfair labor practices under the Labor-Management Relations Act. (29 U. S. C. A., Pocket Part, Sec. 158.)

Allegations of the Complaint and Complaints in Intervention.	Section of National Labor Relations Act, Which Alleged Conduct Would Violate.
from their employ persons belonging to Moving Picture Painters' Local 644 and Carpenters' Local 946. [Complaint, Paragraphs XII(e) and (f), XIII(e), and XV(a); (R. 29-30, 32, 36).]	
2. That the employer defendants refused to employ members of Local 1488 of the Painters' Union, Local 278 of the Janitors' Union, and Local 40 of the Electricians' Union, unless said locals withdrew from the CSU, and refused to negotiate with Local 1488 of the Painters' Union unless said local withdrew from the CSU. [Complaint, Paragraphs XIII(f), (g) and (h); (R. 32-33).]	2. This is a charge that said defendants violated Section 8(1), (3) and (5) of the Labor Act. Section 8(3) prohibits discrimination in employment on account of union membership; Section 8(1) prohibits interference with an employee's right of self-organization, and Section 8(5) prohibits refusal to bargain with the collective bargaining representative of said employee.

The above acts are the only acts which are alleged to have caused damage to the plaintiffs. [Complaint, Paragraph XV (R. 36, 37).]

Allegations of the Complaint and Complaints in Intervention.	Section of National Labor Relations Act, Which Alleged Conduct Would Violate.
COMPLAINTS IN INTERVENTION. The complaints in intervention allege that interveners were members of one of the following constituent local unions of the CSU: Moving Picture Painters' Locals 644 and 1421, Machinists' Local 1185, and Molders' Local 374. These complaints adopt the allegation of plaintiffs' amended complaint and allege that pursuant to the conspiracy described therein defendant motion picture companies either discharged or refused employment to interveners and that because of such discharge or refusal of employment interveners suffered damage. [Adkins Complaint, Paragraphs III, IV, V, VI (R. 72-74). Adams Complaint, Paragraphs II, III and V [R. 87 89).]	This is a charge that said defendants violated Sections 8(1) and (3) of the National Labor Relations Act.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.
No. 475

CONFERENCE OF STUDIO UNIONS, an unincorporated association, *et al.*,

Petitioners,

vs.

LOEW'S INCORPORATED, a corporation, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief for Respondents International Alliance, Etc., Walsh, Brewer, Duval, Fairbanks, Smith, Aller, Dennison, and Local 44 of the International Alliance, etc. in Opposition.

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Brief for Respondents International Alliance, etc., et al., in Opposition.

Opinion Below.

The Opinion of the United States Court of Appeals for the Ninth Circuit [R. 162-170] has not, at this writing, been officially reported.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented.

Is a claim—upon which relief may be granted against a labor union, by way of injunction and treble damages under the Anti-Trust Laws—stated in a complaint in which labor unions and members thereof are plaintiffs, and a rival union and a group of employers in the motion picture industry are defendants, where the basic allegations are that:

Defendant union and defendant employers entered into a conspiracy (1) "for the purpose of destroying" plaintiff unions (to be accomplished by said employers (a) discharging and refusing to reemploy such unions' members unless they gave up their membership therein, and (b) employing only members of the defendant rival union or persons who procured its written consent), and (2) "for the *further purpose* of eliminating" competitors of the employers, none of such competitors being a party to the action (to be accomplished (1) by the employers hoarding pictures, curtailing distribution, inducing longer exhibition of pictures, etc., and (2) by the defendant union furnishing its more skilled members to such employer defendants and requiring the competitors to pay some workmen higher wages than employer defendants paid for the same type of work;

None of the acts which plaintiffs claim injured them did, or tended to, restrain trade; and

The only acts effectuating the alleged conspiracy which did, or tended to, restrain trade were directed solely against the competitors of defendant employers, none of such acts causing injury to plaintiffs?

Statute Involved.

The pertinent provisions of the Anti-Trust Laws, Section 1 and Section 15 of Title 15, U. S. C. A., involved are set forth in the Petition at pages 19-21.

Statement.

This litigation stems from the same jurisdictional dispute between several labor unions which gave rise to: *Oscar Schatte, et al., v. International Alliance, etc., et al.,* 70 Fed. Supp. 1008, 165 F. 2d 216, cert. den. 334 U. S. 812, 92 L. Ed. 1743; *Oscar Schatte, et al. v. International Alliance, etc., et al.,* 182 F. 2d 158, cert. den. 340 U. S. 827, 95 L. Ed. 608, rehearing denied 340 U. S. 885, 95 L. Ed. 643 (hereinafter referred to as the *Second Schatte* case); *Studio Carpenters Local Union No. 946, etc. v. Loew's Incorporated, et al.,* 182 F. 2d 168, cert. den. 340 U. S. 828, 95 L. Ed. 608, rehearing denied, 340 U. S. 885, 95 L. Ed. 643; *Andrew MacKay v. The Loew's Inc., et al.* (and consolidated cases), 182 F. 2d 170, cert. den. 340 U. S. 828, 95 L. Ed. 608, rehearing denied, 340 U. S. 885, 95 L. Ed. 643, and *National Labor Relations Board v. Warner Bros. Pictures, Inc., et al.,* 191 F. 2d 217.

Petitioners, plaintiffs below, are a group of labor organizations who are, with one exception, affiliated with the American Federation of Labor; they are associated under the name Conference of Studio Unions and their members are employed in the Hollywood motion picture industry in various work classifications such as painters, plumbers, machinists, etc. Such Petitioners, as were Intervenors below, are individual members of the labor organizations constituting the Conference of Studio Unions.

Hereinafter all petitioners will sometimes be referred to as The Conference.

Respondents consist of two groups: (1) the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, an international labor organization likewise affiliated with the American Federation of Labor, certain of its officers and one of its chartered locals, all of which will hereinafter be referred to as The IATSE, and (2) a group of employers who produce and distribute motion pictures, hereinafter referred to as The Majors.

The Majors produce practically all of the motion pictures in Hollywood; a small number of pictures are produced by a group of companies known as The Independents, none of which is a party to this action. The entire number of pictures produced annually by The Independents does not exceed 15% of the total number of motion pictures produced in Hollywood; motion pictures produced by them are far less expensive than those produced by The Majors; the average production cost of a feature picture produced by The Independents is not more than 20% of the average production cost of a picture produced by The Majors; among The Independents are corporations which are organized for the purpose of producing a single picture or several of a series and which, when the picture or the series has been completed, are dissolved or go out of business; the total number of persons employed by The Independents is less than 20% of the number employed by The Majors; the single-picture-corporation customarily employs a crew sufficient only to man a single picture for the period of production; the bargaining power of The Independents with the labor unions is smaller than that of The Majors [R. 27-28].

From the complaint it appears:

(a) "The defendants [respondents herein] combined and agreed each with the other for the purpose of destroying the Conference and the Member Unions, and for the further purpose of eliminating as competitors the motion picture companies herein described as Independents" and pursuant to such combination and agreement certain acts, directed against the Independents solely, and not against plaintiffs, and certain other acts directed against plaintiffs, solely and not against the Independents, followed. The acts directed against the Independents are set forth in Paragraphs (a), (b), (c), (d), (i), (j) and (k) of Paragraph XIII of the complaint [R. 31, 32, 33, 34] and are adequately described in the petition herein.

(b) That by these particular acts "the interstate commerce carried on between Majors and Independents in the production and distribution of motion pctures had been restrained and burdened" [R. 35].

(It is not alleged, and no claim is made, that any of such acts or the asserted result thereof in any manner caused injury to plaintiffs.)

(c) With respect to the alleged effectuating acts directed against petitioners, that The Majors discharged persons in their employ who were members of certain of The Conference unions [R. 32]; that The Majors refused to negotiate labor agreements, or to accept for work any persons belonging to certain of The Conference unions until such unions withdrew from The Conference, and upon such withdrawal, such members were permitted to return to work [R. 32-33].

(These are the only acts directed against petitioners performed pursuant to the alleged conspiracy. No claim is made that these acts, or the results thereof, did, or tended to, restrain trade.)

(d) "As a *further* direct result of said agreement and combination, the plaintiffs were injured in their respective businesses and property" [R. 36] in the following fashion:

(1) Plaintiff Kisner was discharged as a result of which he lost a specified sum in *wages.*

(2) By reason of the withdrawal of certain labor unions from The Conference, its monthly revenue was diminished.

(3) The Conference expended substantial sums of money "for the purpose of endeavoring to negotiate agreements" between The Majors and member unions of The Conference, and "for the purpose of endeavoring to reach agreement with defendant Majors for the rehiring of members of member unions and in maintaining its membership" [R. 36-37].

(4) Intervenors have sustained "loss of wages" [R. 74-89].

As a result of the foregoing it is alleged The Conference unions will be destroyed because their members will be compelled to withdraw from membership therein which in turn will destroy The Conference, because the unions' members thereof will be compelled to withdraw therefrom and finally the individual members of The Conference unions will forever lose "their opportunity for re-employment in the motion picture industry, etc." [R. 37-38].

ARGUMENT.

I.

A Conspiracy Forbidden by Section 1, Title 15, U. S. C. A., Cannot of Itself Be the Basis for a Civil Action for Damages; Injury to Be Compensable Under the Anti-trust Laws Must Be the Direct and Proximate Result of an Overt Act Which Does or Tends to Restrain Trade.

Petitioners' conclusion that they are entitled to relief by way of an injunction and three-fold damages, is based on the erroneous premise, urged by them in both courts below and asserted in their petition herein, that since a forbidden conspiracy is alleged, they have been injured by something "forbidden in the Anti-Trust Laws," and therefore come within the provisions of Section 15, Title 15, U. S. C. A. This is not the law and petitioners have fallen into error by failing to recognize that a conspiracy of itself can injure no one and in order for a forbidden conspiracy to ripen into a civil cause of action in which damages are sought, there must be an overt act effectuating the conspiracy, which overt act must not only be the direct and proximate cause of the injury complained of, but, in addition, must be of such a nature that it does or tends to restrain trade.

Nearly forty years ago this Court said in *Nalle v. Oyster*, 230 U. S. 165, at pp. 182-183, 57 L. Ed. 1439 at p. 1446:

> "But the well settled rule is that no civil action lies for a conspiracy unless there be an overt act that results in damage to the plaintiff. To this effect are the very authorities upon which plaintiff in error relies."

Not only must there be "an overt act that results in damage to the plaintiff," but such damage must be the direct, proximate and immediate result of such act and the act must be of such nature as does or tends to restrain trade. On the first occasion after the enactment of the Anti-Trust Law in 1890, upon which this Court had occasion to advert to this principle of law, it said in 1898, in *Hopkins et al. v. U. S.*, 171 U. S. 578 at pp. 592, 593; 43 L. Ed. 290 at p. 296:

> "The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate.
>
> * * * * * * * *
>
> * * * there must be some direct and immediate effect upon interstate commerce in order to come within the act.
>
> (171 U. S. 592.)
>
> * * * * * * * *
>
> * * * the effect upon commerce spoken of must be direct and proximate." (171 U. S. 594.)

The rule of law enunciated in the *Hopkins* and *Nalle* cases has been followed without deviation by the Court of Appeals of each circuit and by all District Courts which have had occasion to refer to the subject. As typical of such decisions by various Courts of Appeal we direct attention to the following:

Jack v. Armour & Co. (8 Cir.), 291 Fed. 741 at p. 745; *Foster & Kleiser v. Special Site Sign Co.* (9 Cir.) 85

F. 2d 742 (cert. den. 299 U. S. 613, 81 L. Ed. 452); *Peterson v. Borden Co.* (7 Cir.), 50 F. 2d 644 at p. 645, 646; *Glenn Coal Co. v. Dickinson Fuel Co.* (4 Cir.), 72 F. 2d 885 at 887; *Noyes v. Parsons, et al.* (9 Cir.), 245 Fed. 689 at 694; *Konecky v. Jewish Press* (8 Cir.), 288 Fed. 179 at 181; *Hart v. B. F. Keith Vaudeville Exchange, et al.* (2 Cir.), 12 F. 2d 341 at 345; *Locker v. American Tobacco Co.* (2 Cir.), 218 Fed. 447 at 448; *Phillips v. Iola Portland Cement Co.* (8 Cir.), 125 Fed. 593 at 594; *Rice v. Standard Oil Co.* (Cir. Ct. D. New Jersey), 134 Fed. 464 at 465; *Suckow Borax Consol. v. Borax Consolidated* (9 Cir.), 185 F. 2d 196 at 208; *Shotkin v. General Electric Co.* (10 Cir.), 171 F. 2d 236; *Feddersen Motors v. Ward* (10 Cir.), 180 F. 2d 519; *Burnham Chemical Co. v. Borax Consolidated* (9 Cir.), 170 F. 2d 569 at 571; *Morris & Co. v. Nat'l Ass'n of Stationers* (7 Cir.), 40 F. 2d 620, and *Schatte, et al. v. International Alliance etc., et al.* (9 Cir.), 182 F. 2d 158, cert. den. 340 U. S. 827, 95 L. Ed. 608; re-hearing denied 340 U. S. 885, 95 L. Ed. 643.

These cases—many of them citing both the *Hopkins* and *Nalle* cases,—hold: (a) that, on both reason and authority, no one can maintain an action under the Anti-Trust Laws, unless he has suffered an injury in his business or property by proximate reason of the violation by those whom he sues, of some of the prohibitions contained in the act; (b) to justify recovery there must be allegations and proof of a causal connection between the damage and the overt acts effectuating the forbidden conspiracy;

(c) the gist of the action is not merely the unlawful conspiracy, but is damage to the individual plaintiff resulting proximately from the acts of the defendant which constitute a violation of the law; (d) if a person has been injured by acts which are not forbidden or declared to be unlawful by the Anti-Trust Laws, he can not recover; (e) the conspiracy condemned is one the direct intent and effect of which is a restraint upon interstate commerce and not one where the effect is merely incidental; (f) the wrongful act must be specific and the natural and probable effect of the combination, which, in turn, must be in restraint of trade. Mere proof that a defendant has entered into a contract, combination or conspiracy in restraint of trade, is not sufficient to support a civil cause of action. Where a private suitor asserts a claim under the act, the gravaman of the complaint is not the forbidden conspiracy, but the damage, for which a recovery is allowable, is the damage which he has suffered as a result of the acts of the conspirators directed against him and committed in the course of the forbidden conspiracy, and in furtherance of its purpose; (g) the injury must be the result of acts which do or tend to lessen commercial competition; and (h) the right of action given to persons injured through the resultant tendency to substantial lessening of competition includes only such injury as such tendency to lessen competition engenders.

II.

There Is No Conflict of Decision.

Although petitioners state as one of the two grounds upon which they rely for the allowance of the writ is that the decision of the Court of Appeals is in conflict with the decisions of other Courts of Appeals on the same matter (Pet. 6), they do not cite any conflicting decision or argue the point. There is no conflict between the decision of the Court of Appeals below and any decision of any other United States court. Petitioners cite *Roseland v. Pfister,* 125 F. 2d 417; *Vines v. General Outdoor Advertising,* 171 F. 2d 487; *Cardella v. Chandler,* 172 F. 2d 402, and *Anderson v. Shipowners,* 272 U. S. 359. These are not conflicting decisions. In each of these cases there was not only a forbidden contract, combination or conspiracy to restrain trade or to create a monopoly, but the injuries to the respective plaintiffs were the direct and proximate result of overt acts which of themselves did, or tended to, restrain trade or create a monopoly. In the instant case there is no contention by petitioners that any act causing them injury did or could restrain trade; in fact the contrary is conceded.

III.

There Is No Important Question of Federal Law Involved; the Court of Appeals Followed Long Settled Applicable Rules of Law.

As we have heretofore pointed out, it has for many years been the well settled rule of law, enunciated initially by this Court in the *Hopkins* and *Nalle* cases, *supra,* and followed without deviation whenever the question was presented, by all Courts of Appeal and District Courts, that in a civil action between private parties under the

Anti-Trust Laws a forbidden conspiracy of itself gives rise to no injury, and, in order for compensable damage to exist, there must be injury resulting directly and proximately, not indirectly nor remotely, from the overt acts effectuating such conspiracy, and such acts must be of a nature which do or tend to restrain trade. The Court of Appeals below very properly determined that, since the injury to petitioners did not stem from any lessening of commercial competition among the studios, but from acts which could have had no effect upon interstate commerce, the District Court correctly held that the complaint did not state a claim upon which relief could be granted under the Anti-Trust Laws.

IV.

The Decision Below Is Clearly Correct.

In *The Second Schatte Case* (182 F. 2d 158, cert. den. 340 U. S. 827, 95 L. Ed. 608, rehearing denied 340 U. S. 885, 95 L. Ed. 643), plaintiffs in the District Court, who ultimately became petitioners for a writ of certiorari in this Court, were individual members of Studio Carpenters Local Union No. 946, which was initially a party plaintiff in this action [R. 3], but which withdrew before the judgment of dismissal was entered herein [R. 95-96-97]. They instituted their separate action for and on behalf of themselves and all other members of said Local No. 946. Defendants in that action were The Majors and The IATSE, respondents herein.

In their third cause of action, they alleged, as do petitioners herein, that a conspiracy was entered into—being the same conspiracy as is asserted by petitioners herein—

to eliminate The Independents as competitors of The Majors, to deprive the individual carpenters, members of said Local 946, of their employment, and to give such employment to members or permittees of respondent The IATSE. They sought relief by way of threefold damages and an accounting under the Anti-Trust Laws. Judgment of dismissal was entered by the District Court which was affirmed by the United States Court of Appeals for the Ninth Circuit, it holding that the alleged acts did not constitute a violation of the Anti-Trust Laws and that the loss of plaintiffs' rights of employment was not the result of any lessening of commercial competition among the studios (182 F. 2d 158 at 167). Plaintiffs in that action, who were appellants before the Court of Appeals, unsuccessfully sought to obtain a writ of certiorari from this Court. Petitioners in the instant case filed with this Court a motion for leave to file a brief as *amici curiae,* which motion was by this Court denied (340 U. S. 827, 95 L. Ed. 608). Therefore, since the primary question concerned in the third cause of action in the second *Schatte* case, and the primary question presented by the petition for writ of certiorari in the instant case, are substantially the same, it would appear that this Court has but recently denied a petition for a writ of certiorari involving the same question as is now presented, and after it had the benefit of a supporting brief filed by petitioners herein.

When the instant case reached the Court of Appeals, petitioners herein—appellants below—vigorously attacked the decision of that Court in *The Second Schatte Case*

and endeavored to persuade the Court of Appeals either to abandon the position which it had taken in *The Second Schatte Case,* or to so interpret its own language as to render it not controlling in the instant case. The Court of Appeals reaffirmed the position which it had taken in *The Second Schatte Case,* stating as follows:

> "We held in that case [*Second Schatte Case*] that no violation of the anti-trust laws had been shown because no restraint on 'commercial competition' had been alleged, no more being alleged than an agreement to compel the Independents to adopt certain employment policies. In the complaint in the instant case an attempt is made to allege a restraint on commercial competition by showing wage rate discrimination against the Independents and the agreement entered into among the Majors to restrict production. In reference to the complaint in the Schatte case we said that in the event the alleged conspiracy be considered illegal no recovery could be had because there was no allegation of '* * * damage which stems from a conspiracy in violation of the anti-trust laws * * *. The loss of their rights of employment is not a result of any lessening of commercial competition among the studios.' 182 F. 2d 158, 167. We think the same observation holds true with respect to the allegations of the complaint in the instant case." [R. 167.]

The Court of Appeals below then went on to say that the alleged conspiracy in the instant case was not such as would bring the petitioners herein within the contemplation of the Anti-Trust Law and that the entire import

of the alleged conspiracy, in so far as competitive conditions are concerned, was the attempt to destroy The Independents. As the Court stated:

> ". . . Any restraint on commercial competition would occur in the production of motion pictures and we fail to see how the appellants are in a position to complain about that situation. They are not in the business of producing motion pictures; they do not exhibit motion pictures; they neither compete with the Majors nor purchase from them. In fact, they are not employees of the companies whom it is alleged the appellees intend to destroy. The damage alleged to have been suffered by appellants does not flow from any injury to the competitive situation of the motion picture industry, that is, their injury has not arisen from the acts allegedly perpetrated against the Independents." [R. 167-168.]

The Court of Appeals then applied the long settled rule, hereinbefore discussed, to the effect that injuries, in order to afford relief under the Anti-Trust Laws in a civil action between private suitors, must be the direct and proximate result of acts which effectuated or tended to create a restraint on commercial competition and that injuries which are merely incidental do not form the basis for such relief. This was the crux of the Court's decision and, in the final analysis, is the only question now presented to this Court by the petition herein.

However, other grounds in support of the District Court's judgment of dismissal were presented to both courts below by respondents. The Court of Appeals noted such contentions [R. 166] but did not find it necessary, in order to sustain the judgment appealed from, to discuss or pass upon any of them. The additional contentions of

respondents, any one of which we submit, necessitates an affirmance of the judgment of dismissal, are summarized as follows:

(1) Even if it be assumed *arguendo* that the complaint adequately alleges a claim which would sustain a judgment for treble damages in favor of petitioners under Section 15, Title 15, U. S. C. A., or for an injunction under Section 26, prior to the enactment of the National Labor Relations Act, the District Court, nevertheless, did not have jurisdiction, and said complaint did not state a claim upon which relief could be granted for the reason that the only acts resulting in injury to petitioners constituted unfair labor practices over which the National Labor Relations Board has exclusive jurisdiction. Doctrine of primary jurisdiction applies. (Sec. 160(a), Title 29, U. S. C. A.; Sec. 158, Title 29, U. S. C. A.; *Schatte, et al. v. International Alliance, etc., et al.* (9 Cir.), 182 F. 2d 158; cert den. 340 U. S. 827, 95 L. Ed. 608, rehearing denied 340 U. S. 885, 95 L. Ed. 643; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261; *United Electrical Radio & Machine Workers v. International Brotherhood of Electrical Workers*, 115 F. 2d 488; *California Association of Employers v. Building and Construction Trades Council* (9 Cir., 1949), 178 F. 2d 157; *Amazon Cotton Mill Co. v. Textile Workers Union* (4 Cir., 1948), 167 F. 2d 183; *Keogh v. Chicago and Northwestern R. Co.*, 260 U. S. 156; *U. S. Navigation Co. v. Cunard SS. Co.*, 284 U. S. 474; *Terminal Warehouse Co. v. Pennsylvania R. R. Co.*, 297 U. S. 500; *Georgia v. Pennsylvania R. R. Co.*, 324

U. S. 439; *S. S. W. Inc. v. Air Transport of America, et al.,* 91 Fed. Supp. 269; 51 Harvard Law Review, 1251 and 1255.)

(2) Doctrine of primary jurisdiction is still applicable and not affected by fact that not all employees work for same employer (*N. L. R. B. v. Grower-Shipper Vegetable Association* (9 Cir.), 122 F. 2d 368; *N. L. R. B. v. Long Lake Lumber Co.* (9 Cir.), 138 F. 2d 363; *N. L. R. B. v. Sun Tent Co.* (9 Cir.), 171 F. 2d 483; *Phelps-Dodge Corp. v. Labor Board,* 313 U. S. 177 at 188 and 194.)

(3) The alleged conspiracy which assertedly resulted in injury to petitioners is not forbidden in the Anti-Trust Laws. It is nothing more than a closed-shop agreement, valid under the National Labor Relations Act and under the laws of the State of California. (*Colgate Palmolive-Peet Co. v. N. L. R. B.,* 338 U. S. 355, 94 L. Ed. 161.) Even the synchronization of a closed-shop contract and an arbitrarily closed union does not give one, who, by reason thereof, is deprived of his livelihood, a cause of action under the Anti-Trust Laws. (*Courant v. International Photographers, etc.* (9 Cir.), 176 F. 2d 1000-1002, cert. den., 338 U. S. 943, 94 L. Ed. 581.) Carpenter-painter-machinist, etc., work in the motion picture studios is neither intrastate nor interstate trade or commerce; it is not a commercial activity; it is labor. (*United States v. Fur Dressers, etc.*, 5 F. 2d 869 at 872.) Whether one or another group of men does such work in the studios constitutes a mere private controversy, local in character. (*Hopkins v. U. S.,* 171 U. S. 578, 43 L. Ed. 290.)

(4) Competition between labor organizations which results in the members of one of them obtaining the work formerly performed by the members of the other or which results in the elimination or destruction of one of the competing labor organizations does not give rise to any cause of action under the Anti-Trust Laws. (*United States v. Hutcheson*, 312 U. S. 219, 85 L. Ed. 788; *United States v. Carrozzo*, 37 Fed. Supp.. 191, affd. 313 U. S. 539, 85 L. Ed. 1508; *Terrio v. S. N. Nielson Const. Co.*, 30 Fed. Supp. 77.)

(5) The alleged conspiracy is divisible and severable as to that which is forbidden and that which is not forbidden in the Anti-Trust Laws. (*Daniels v. Tearney*, 102 U. S. 415 at 420, 26 L. Ed. 187 at 188; *McCullough v. Commonwealth of Virginia*, 172 U. S. 102 at 115-116, 43 L. Ed. 382 at 387; *Shotkin v. General Electric Co.*, 171 F. 2d 236 at 238; *Oregon Steam Nav. Co. v. Winsor*, 87 U. S. 64 at 70-71, 22 L. Ed. 315 at 319, 20 Wall. 64 at 70-71; *Western Union Telegraph Co. v. B. & S. Ry. Co.*, 11 Fed. 1, 4, 5; *United States Consol. S. R. Co. v. Griffin & Skelley Co.*, 126 Fed. 364 at 370; *Chicago, St. L. & N. O. R. Co. v. Pullman Southern Car Co.*, 139 U. S. 79 at 91, 35 L. Ed. 97 at 102; *Paramount, etc. v. National Theatre Corporation*, 49 F. 2d 64 at 66; *United States v. Bradley*, 10 Pet. (U. S.) 343, 35 U. S. 448; *Paramount Famous Lasky Corporation v. National Theatre Corporation* (4 Cir.), 49 F. 2d 64; *McJunkin v. Richfield Oil Corporation*, 33 Fed. Supp. 466, 468-469; *Noyes v. Parsons, et al.*, 245 Fed. 689 at 694.)

Conclusion.

Having been defeated by respondent The IATSE in the open market of labor competition. The Conference, as a last resort, now seeks to impose upon The IATSE, its competitor in such labor market, the punitive measures provided for in the Anti-Trust Laws. They say (Pet. p. 13), "that the anti-trust decisions have used language indicating that it is the *source* of the injury, and not the character of the property injured, which constitutes the test of recovery." With this statement we are in accord; however, the *source* of the injuries which petitioners say they suffered were acts which did not, and could not in any fashion, restrain trade. Since the only acts which at best could tend to restrain trade were directed against The Independents and caused petitioners no injury, petitioners may not, therefore, assume the role of a *deus ex machina* for The Independents and found a cause of action in their own favor on an alleged violation of the Anti-Trust Laws directed against The Independents.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

January 10, 1952.

Respectfully submitted,

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